

HOUSE BILL 355

K3, P2, P1

2lr1024

By: **Delegates Schuh, Costa, Dwyer, George, Kipke, McConkey, McMillan, and Vitale**

Introduced and read first time: January 30, 2012

Assigned to: Health and Government Operations

A BILL ENTITLED

1 AN ACT concerning

2 **Employment and State Procurement – Use of the Federal E–Verify Program**
3 **(Better Maryland – Immigration Reform)**

4 FOR the purpose of establishing the Office of Employment Verification Assistance in
5 the Division of Labor and Industry; requiring the Office to provide certain
6 assistance to certain employers; requiring, at certain intervals, the
7 Commissioner of Labor and Industry to request from the U.S. Department of
8 Homeland Security a list of all employers in the State that are registered with
9 the federal E–Verify program; requiring the Commissioner, on receipt of a
10 certain list, to post the list on the Department of Labor, Licensing, and
11 Regulation Web site; requiring the Commissioner, under certain circumstances,
12 to notify the chief procurement officer of each State and local government for a
13 certain purpose; establishing the Lawful Employment Enforcement Fund as a
14 special, nonlapsing fund; specifying the purpose of the Fund; requiring the
15 Department to administer the Fund; requiring the State Treasurer to hold the
16 Fund and the Comptroller to account for the Fund; specifying the contents of
17 the Fund; specifying the purpose for which the Fund may be used; providing for
18 the investment of money in and expenditures from the Fund; requiring an
19 employer to register and participate in the federal E–Verify program, verify the
20 work authorization status of each employee hired, and maintain certain records;
21 authorizing an employer to contract with a person for a certain purpose;
22 authorizing an employer to obtain certain verification through the Office under
23 certain circumstances; requiring an employer to sign a certain affidavit before
24 receiving certain assistance from the Office; requiring an employer to take
25 certain action if an employer acquires access to the Internet after signing and
26 filing a certain affidavit with the Office; requiring the Department to design a
27 certain affidavit form; prohibiting an employer from knowingly employing or
28 continuing to employ certain individuals or use certain contracts or agreements
29 to obtain the labor of certain individuals; providing that an employer is not in
30 violation of certain provisions of this Act under certain circumstances;

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 specifying that an employer who terminates an employee under certain
2 circumstances is not subject to a certain civil action; requiring a contractor that
3 enters into a contract with a subcontractor to require certain documents from
4 the subcontractor; requiring the contractor to maintain a copy of certain
5 documents for a certain time period; specifying that a contractor that
6 terminates a certain contract may not be considered in breach of contract or
7 held liable for certain damages; authorizing a subcontractor to file a certain
8 action with a certain court within a certain time period; specifying that a
9 contractor is deemed to be the employer of a certain individual unless a certain
10 requirement is met; requiring the Commissioner to develop and implement a
11 certain statewide random auditing program; specifying that the auditing
12 program may be conducted in a certain manner; requiring the Commissioner to
13 develop and make available a certain complaint form; specifying that a certain
14 complaint form must require certain information; prohibiting a certain
15 complaint form from requiring certain information; prohibiting an employer
16 from taking certain action against certain individuals; requiring the
17 Commissioner to take certain actions on receipt of a certain complaint form,
18 except under certain circumstances; requiring the Commissioner to verify the
19 work authorization status of certain individuals with the federal government
20 under certain circumstances; prohibiting the Commissioner from attempting to
21 independently make a certain final determination; authorizing the
22 Commissioner to take certain actions while administering a certain program or
23 investigating a certain complaint; specifying that a reproduction or photograph
24 or a certain business record is not a public record except under certain
25 circumstances; requiring the Commissioner to issue a certain preliminary order
26 under certain circumstances; authorizing an employer to submit, within a
27 certain time period, a certain request for a certain hearing; specifying that,
28 under certain circumstances, the employer is deemed to have waived the right
29 to a certain hearing; requiring that a certain hearing be completed within a
30 certain time after a certain order was issued; requiring the Commissioner to
31 issue a final order within a certain time period; requiring the Commissioner to
32 adopt certain regulations and authorizing the Commissioner to adopt certain
33 regulations; specifying that certain regulations must be consistent with the
34 Administrative Procedure Act; requiring, beginning on a certain date and at
35 certain intervals thereafter, the Commissioner to post a certain list of certain
36 employers on the Department's Web site; specifying that a certain list must
37 remain on the Web site until a certain time; requiring the Commissioner to
38 notify U.S. Immigration and Customs Enforcement of certain employers and
39 certain individuals; requiring the Commissioner to notify a certain local law
40 enforcement agency of certain individuals under certain circumstances;
41 establishing certain penalties for violations of certain provisions of this Act;
42 requiring the Commissioner to issue a warning, under certain circumstances, in
43 lieu of certain penalties; specifying that certain violations must result from a
44 complaint that is separate from another certain complaint; requiring that
45 certain civil penalties be paid into the Fund; specifying that certain proof
46 creates a certain rebuttable presumption; specifying criteria for the mandatory
47 registration in a certain federal E-Verify program for certain contractors and

1 grantees; requiring a certain person to make a certain affirmation to a
2 contracting agency under certain circumstances; prohibiting certain persons
3 from employing or continuing to employ or contract independently with certain
4 individuals; imposing certain requirements on certain subcontractors; providing
5 for the application of certain provisions of this Act; defining certain terms; and
6 generally relating to the use of the federal E-Verify program in employment
7 and State procurement.

8 BY repealing and reenacting, without amendments,
9 Article – Labor and Employment
10 Section 2–101(a), (b), and (c) and 3–101(a) and (b)
11 Annotated Code of Maryland
12 (2008 Replacement Volume and 2011 Supplement)

13 BY repealing and reenacting, with amendments,
14 Article – Labor and Employment
15 Section 2–107
16 Annotated Code of Maryland
17 (2008 Replacement Volume and 2011 Supplement)

18 BY adding to
19 Article – Labor and Employment
20 Section 3–1101 through 3–1114 to be under the new subtitle “Subtitle 11. Use of
21 the Federal E-Verify Program”
22 Annotated Code of Maryland
23 (2008 Replacement Volume and 2011 Supplement)

24 BY adding to
25 Article – State Finance and Procurement
26 Section 20–101 through 20–104 to be under the new title “Title 20. Use of the
27 Federal E-Verify Program”
28 Annotated Code of Maryland
29 (2009 Replacement Volume and 2011 Supplement)

30 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
31 MARYLAND, That the Laws of Maryland read as follows:

32 **Article – Labor and Employment**

33 2–101.

- 34 (a) In this title the following words have the meanings indicated.
- 35 (b) “Commissioner” means the Commissioner of Labor and Industry.
- 36 (c) “Division” means the Division of Labor and Industry.

1 2-107.

2 (a) In addition to any other units, the Division shall include the units
3 enumerated in this section.

4 (b) (1) There is an Employment Standards Service Unit in the Division.

5 (2) Under the direction of the Commissioner, the Employment
6 Standards Service Unit shall:

7 (i) enforce Title 3, Subtitle 2 of this article;

8 (ii) carry out Title 3, Subtitle 3 of this article;

9 (iii) enforce Title 3, Subtitle 4 of this article; and

10 (iv) enforce Title 3, Subtitle 5 of this article.

11 (c) There is a State Mediation and Conciliation Service in the Division.

12 (d) (1) There is a research and information unit in the Division.

13 (2) Under the direction of the Commissioner, the research and
14 information unit shall collect, organize, and report statistical information on matters
15 within the jurisdiction of the Division.

16 (e) There is a Safety Engineering and Education Service in the Division.

17 (f) (1) There is a Prevailing Wage Unit in the Division.

18 (2) Under the direction of the Commissioner, the Prevailing Wage
19 Unit shall administer and enforce Title 17, Subtitle 2 of the State Finance and
20 Procurement Article.

21 **(G) (1) THERE IS AN OFFICE OF EMPLOYMENT VERIFICATION**
22 **ASSISTANCE IN THE DIVISION.**

23 **(2) UNDER THE DIRECTION OF THE COMMISSIONER, THE OFFICE**
24 **OF EMPLOYMENT VERIFICATION ASSISTANCE SHALL PROVIDE ASSISTANCE TO**
25 **AN EMPLOYER IN THE STATE THAT DOES NOT HAVE ACCESS TO THE INTERNET**
26 **BY OBTAINING VERIFICATION OF THE WORK AUTHORIZATION STATUS OF AN**
27 **EMPLOYEE FOR THE EMPLOYER AT NO CHARGE.**

28 **[(g)] (H)** Notwithstanding the funding provisions of § 3-919 of this article,
29 for fiscal year 2007 and for each subsequent fiscal year, the Governor shall include in
30 the annual budget bill submitted to the General Assembly an appropriation for the

1 Division of Labor and Industry sufficient to implement [the provisions] **SUBSECTIONS**
2 **(A) THROUGH (F)** of this section, including amounts not less than:

3 (1) \$315,000 for implementation of the Employment Standards Service
4 Unit in the Division; and

5 (2) \$385,000 for implementation of the Prevailing Wage Unit in the
6 Division.

7 3-101.

8 (a) In this title the following words have the meanings indicated.

9 (b) “Commissioner” means the Commissioner of Labor and Industry.

10 **SUBTITLE 11. USE OF THE FEDERAL E-VERIFY PROGRAM.**

11 **3-1101.**

12 **(A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS**
13 **INDICATED.**

14 **(B) “EMPLOYER” MEANS A PERSON ENGAGED IN A BUSINESS,**
15 **INDUSTRY, PROFESSION, TRADE, OR OTHER ENTERPRISE IN THE STATE.**

16 **(C) “E-VERIFY PROGRAM” MEANS:**

17 **(1) THE FEDERAL E-VERIFY PROGRAM THAT PROVIDES**
18 **ELECTRONIC VERIFICATION OF WORK AUTHORIZATION AND IS JOINTLY**
19 **OPERATED BY THE U.S. DEPARTMENT OF HOMELAND SECURITY AND THE**
20 **SOCIAL SECURITY ADMINISTRATION; OR**

21 **(2) A SUCCESSOR PROGRAM THAT IS AUTHORIZED BY THE U.S.**
22 **DEPARTMENT OF HOMELAND SECURITY TO VERIFY ELECTRONICALLY THE**
23 **WORK AUTHORIZATION STATUS OF NEWLY HIRED EMPLOYEES IN ACCORDANCE**
24 **WITH FEDERAL IMMIGRATION LAW OR REGULATION.**

25 **(D) “FUND” MEANS THE LAWFUL EMPLOYMENT ENFORCEMENT FUND.**

26 **(E) “LICENSE” MEANS ANY LICENSE, PERMIT, CERTIFICATE, APPROVAL,**
27 **REGISTRATION, CHARTER, OR SIMILAR FORM OF AUTHORIZATION REQUIRED BY**
28 **LAW AND ISSUED BY A GOVERNMENTAL UNIT FOR THE PURPOSE OF OPERATING**
29 **A BUSINESS IN THE STATE.**

1 **(F) “OFFICE” MEANS THE OFFICE OF EMPLOYMENT VERIFICATION**
2 **ASSISTANCE IN THE DIVISION.**

3 **(G) “UNAUTHORIZED ALIEN” MEANS AN ALIEN WHO DOES NOT HAVE**
4 **THE LEGAL RIGHT OR AUTHORIZATION UNDER FEDERAL LAW TO WORK IN THE**
5 **UNITED STATES AS DESCRIBED IN 8 U.S.C. § 1324A(H)(3).**

6 **3-1102.**

7 **THIS SUBTITLE APPLIES TO AN EMPLOYER:**

8 **(1) ON AND AFTER DECEMBER 31, 2012, IF THE EMPLOYER**
9 **EMPLOYS MORE THAN 500 EMPLOYEES IN THE STATE;**

10 **(2) ON AND AFTER JUNE 30, 2013, IF THE EMPLOYER EMPLOYS**
11 **AT LEAST 200 AND NOT MORE THAN 500 EMPLOYEES IN THE STATE; AND**

12 **(3) ON AND AFTER JANUARY 1, 2014, IF THE EMPLOYER EMPLOYS**
13 **FEWER THAN 200 EMPLOYEES IN THE STATE.**

14 **3-1103.**

15 **(A) (1) EVERY 3 MONTHS, THE COMMISSIONER SHALL REQUEST**
16 **FROM THE U.S. DEPARTMENT OF HOMELAND SECURITY A LIST OF ALL**
17 **EMPLOYERS IN THE STATE THAT ARE REGISTERED WITH THE E-VERIFY**
18 **PROGRAM.**

19 **(2) ON RECEIPT OF THE LIST, THE COMMISSIONER SHALL POST**
20 **THE LIST ON THE DEPARTMENT’S WEB SITE.**

21 **(B) THE COMMISSIONER MAY ADOPT REGULATIONS TO CARRY OUT**
22 **THIS SUBTITLE.**

23 **3-1104.**

24 **(A) THERE IS A LAWFUL EMPLOYMENT ENFORCEMENT FUND.**

25 **(B) THE PURPOSE OF THE FUND IS TO PAY ALL COSTS AND EXPENSES**
26 **INCURRED BY THE COMMISSIONER THAT ARE RELATED TO THE ENFORCEMENT**
27 **OF THIS SUBTITLE, INCLUDING THE COSTS ASSOCIATED WITH THE OFFICE.**

28 **(C) THE DEPARTMENT SHALL ADMINISTER THE FUND.**

1 **(D) (1) THE FUND IS A SPECIAL, NONLAPSING FUND THAT IS NOT**
2 **SUBJECT TO § 7-302 OF THE STATE FINANCE AND PROCUREMENT ARTICLE.**

3 **(2) THE STATE TREASURER SHALL HOLD THE FUND**
4 **SEPARATELY, AND THE COMPTROLLER SHALL ACCOUNT FOR THE FUND.**

5 **(E) THE FUND CONSISTS OF:**

6 **(1) PENALTIES ASSESSED AND REQUIRED TO BE DISTRIBUTED TO**
7 **THE FUND UNDER THIS SUBTITLE;**

8 **(2) MONEY APPROPRIATED IN THE STATE BUDGET TO THE FUND;**

9 **(3) ANY INVESTMENT EARNINGS OF THE FUND; AND**

10 **(4) ANY OTHER MONEY FROM ANY OTHER SOURCE ACCEPTED FOR**
11 **THE BENEFIT OF THE FUND.**

12 **(F) THE FUND MAY BE USED ONLY FOR ENFORCING THIS SUBTITLE.**

13 **(G) (1) THE STATE TREASURER SHALL INVEST THE MONEY OF THE**
14 **FUND IN THE SAME MANNER AS OTHER STATE MONEY MAY BE INVESTED.**

15 **(2) INVESTMENT EARNINGS OF THE FUND SHALL BE CREDITED**
16 **AND PAID INTO THE FUND.**

17 **(H) EXPENDITURES FROM THE FUND MAY BE MADE ONLY IN**
18 **ACCORDANCE WITH THE STATE BUDGET.**

19 **3-1105.**

20 **(A) IN THIS SECTION, “EMPLOYER” INCLUDES A GOVERNMENTAL UNIT.**

21 **(B) AN EMPLOYER SHALL:**

22 **(1) REGISTER AND PARTICIPATE IN THE E-VERIFY PROGRAM;**

23 **(2) VERIFY THE WORK AUTHORIZATION STATUS OF EACH**
24 **EMPLOYEE HIRED BY THE EMPLOYER; AND**

25 **(3) MAINTAIN RECORDS OF ALL RESULTS, INCLUDING**
26 **CONFIRMATIONS, TENTATIVE NONCONFIRMATIONS, OR FINAL**

1 NONCONFIRMATIONS, GENERATED BY THE E-VERIFY PROGRAM WHEN THE
2 EMPLOYER IS VERIFYING THE WORK AUTHORIZATION STATUS OF AN EMPLOYEE.

3 (C) AN EMPLOYER MAY CONTRACT WITH A PERSON FOR THE PURPOSE
4 OF COMPLYING WITH SUBSECTION (B) OF THIS SECTION.

5 (D) (1) AN EMPLOYER THAT DOES NOT HAVE ACCESS TO THE
6 INTERNET MAY OBTAIN VERIFICATION OF THE WORK AUTHORIZATION STATUS
7 OF AN EMPLOYEE THROUGH THE OFFICE.

8 (2) BEFORE THE OFFICE OBTAINS VERIFICATION ON BEHALF OF
9 THE EMPLOYER, THE EMPLOYER SHALL SIGN AN AFFIDAVIT UNDER PENALTY OF
10 PERJURY ATTESTING TO THE EMPLOYER'S LACK OF ACCESS TO THE INTERNET.

11 (3) AN EMPLOYER IS NOT IN VIOLATION OF THIS SECTION IF THE
12 EMPLOYER HAS:

13 (I) FILED THE AFFIDAVIT REQUIRED UNDER PARAGRAPH
14 (2) OF THIS SUBSECTION WITH THE OFFICE; AND

15 (II) REQUESTED ACTION BE TAKEN BY THE OFFICE TO
16 ENSURE THE EMPLOYER'S COMPLIANCE WITH THIS SECTION.

17 (4) IF AN EMPLOYER ACQUIRES ACCESS TO THE INTERNET AFTER
18 SIGNING AND FILING AN AFFIDAVIT WITH THE OFFICE UNDER THIS
19 SUBSECTION, THE EMPLOYER SHALL:

20 (I) COMPLY WITH SUBSECTION (B) OF THIS SECTION
21 WITHIN 30 DAYS AFTER ACQUIRING INTERNET ACCESS; AND

22 (II) SEND WRITTEN NOTICE TO THE OFFICE.

23 (5) THE DEPARTMENT SHALL DESIGN AN AFFIDAVIT FORM TO BE
24 USED UNDER PARAGRAPH (2) OF THIS SUBSECTION.

25 3-1106.

26 (A) IN THIS SECTION, "EMPLOYER" INCLUDES A GOVERNMENTAL UNIT.

27 (B) AN EMPLOYER MAY NOT:

28 (1) KNOWINGLY EMPLOY OR CONTINUE TO EMPLOY AN
29 INDIVIDUAL WHO IS AN UNAUTHORIZED ALIEN; OR

1 **(2) USE A CONTRACT, SUBCONTRACT, INDEPENDENT**
2 **CONTRACTOR AGREEMENT, OR OTHER SIMILAR CONTRACT OR AGREEMENT TO**
3 **OBTAIN THE LABOR OF AN INDIVIDUAL WHO IS AN UNAUTHORIZED ALIEN.**

4 **(C) AN EMPLOYER IS NOT IN VIOLATION OF SUBSECTION (B) OF THIS**
5 **SECTION WHILE:**

6 **(1) COMPLYING WITH THE VERIFICATION REQUIREMENT OF**
7 **SUBSECTION (A) OF THIS SECTION;**

8 **(2) COMPLYING WITH FEDERAL REQUIREMENTS TO ASSIST AN**
9 **EMPLOYEE IN CONTESTING A TENTATIVE NONCONFIRMATION FROM THE**
10 **E-VERIFY PROGRAM;**

11 **(3) WAITING FOR A FINAL NONCONFIRMATION FROM THE**
12 **E-VERIFY PROGRAM; OR**

13 **(4) WAITING FOR ACTION TO BE TAKEN BY THE OFFICE.**

14 **(D) AN EMPLOYER WHO TERMINATES AN EMPLOYEE TO COMPLY WITH**
15 **THIS SECTION MAY NOT BE SUBJECT TO A CIVIL ACTION FOR WRONGFUL**
16 **TERMINATION OF THE EMPLOYEE.**

17 **3-1107.**

18 **(A) THIS SECTION APPLIES TO AN EMPLOYER WHO IS A CONTRACTOR.**

19 **(B) IF A CONTRACTOR ENTERS INTO A CONTRACT WITH A**
20 **SUBCONTRACTOR, THEN THE CONTRACTOR SHALL REQUIRE:**

21 **(1) A SIGNED AFFIDAVIT FROM THE SUBCONTRACTOR:**

22 **(I) CERTIFYING COMPLIANCE WITH §§ 3-1105 AND 3-1106**
23 **OF THIS SUBTITLE FOR THE DURATION OF THE CONTRACT;**

24 **(II) CERTIFYING THAT THE INDIVIDUAL SIGNING THE**
25 **AFFIDAVIT IS A UNITED STATES CITIZEN OR AN ALIEN LAWFULLY PRESENT IN**
26 **THE UNITED STATES;**

27 **(III) ACKNOWLEDGING THAT, IF THE SUBCONTRACTOR DOES**
28 **NOT MAINTAIN COMPLIANCE WITH §§ 3-1105 AND 3-1106 OF THIS SUBTITLE**
29 **FOR THE DURATION OF THE CONTRACT, THE CONTRACTOR MAY TERMINATE**

1 THE CONTRACT WITHOUT INCURRING LIABILITY FOR DAMAGES RESULTING
2 FROM THE TERMINATION; AND

3 (IV) ACKNOWLEDGING THAT THE INDIVIDUAL SIGNING THE
4 AFFIDAVIT IS SUBJECT TO PROSECUTION UNDER 18 U.S.C. § 911 IF THE
5 INDIVIDUAL FRAUDULENTLY CLAIMS TO BE A UNITED STATES CITIZEN OR AN
6 ALIEN LAWFULLY PRESENT IN THE UNITED STATES;

7 (2) COPIES OF ALL RECORDS MAINTAINED IN ACCORDANCE WITH
8 § 3-1105 OF THIS SUBTITLE OF ALL EMPLOYEES WORKING UNDER THE
9 CONTRACT DURING THE CONTRACT TERM; AND

10 (3) COPIES OF ONE OF THE FOLLOWING DOCUMENTS FOR ALL
11 INDIVIDUALS CLASSIFIED AS OR CLAIMING TO BE INDEPENDENT CONTRACTORS:

12 (I) A VALID STATE DRIVER'S LICENSE OR IDENTIFICATION
13 CARD ISSUED BY THE MOTOR VEHICLE ADMINISTRATION; OR

14 (II) A VALID DRIVER'S LICENSE OR IDENTIFICATION CARD
15 ISSUED BY ANOTHER STATE.

16 (C) THE CONTRACTOR SHALL MAINTAIN A COPY OF THE DOCUMENTS
17 GIVEN TO THE CONTRACTOR IN ACCORDANCE WITH SUBSECTION (A) OF THIS
18 SECTION FOR 1 YEAR AFTER THE CONTRACT TERM ENDS.

19 (D) (1) IF A CONTRACTOR TERMINATES A CONTRACT WITH A
20 SUBCONTRACTOR BECAUSE THE SUBCONTRACTOR FAILED TO MAINTAIN
21 COMPLIANCE WITH § 3-1105 OR § 3-1106 OF THIS SUBTITLE, THEN THE
22 CONTRACTOR MAY NOT:

23 (I) BE CONSIDERED IN BREACH OF CONTRACT; OR

24 (II) BE HELD LIABLE FOR DAMAGES RESULTING FROM THE
25 TERMINATION OF THE CONTRACT.

26 (2) WITHIN 30 DAYS AFTER THE DATE ON WHICH A CONTRACT IS
27 TERMINATED, THE SUBCONTRACTOR MAY FILE AN ACTION WITH A COURT
28 HAVING JURISDICTION TO DETERMINE WHETHER A CONTRACT WAS CORRECTLY
29 TERMINATED.

30 (E) IF AN INDIVIDUAL IS CLASSIFIED AS OR CLAIMS TO BE AN
31 INDEPENDENT CONTRACTOR BUT IS LATER DETERMINED TO BE AN EMPLOYEE
32 OF A CONTRACTOR, THE CONTRACTOR WHO CONTRACTED WITH THE

1 INDIVIDUAL IS DEEMED TO BE THE EMPLOYER OF THE INDIVIDUAL FOR
2 PURPOSES OF THIS SUBTITLE UNLESS THE CONTRACTOR MAINTAINED
3 DOCUMENTATION IN ACCORDANCE WITH SUBSECTION (B) OF THIS SECTION.

4 **3-1108.**

5 (A) (1) THE COMMISSIONER SHALL DEVELOP AND IMPLEMENT A
6 STATEWIDE RANDOM AUDITING PROGRAM TO INSPECT EMPLOYERS FOR
7 COMPLIANCE WITH §§ 3-1105 AND 3-1106 OF THIS SUBTITLE.

8 (2) THE AUDITING PROGRAM MAY BE CONDUCTED SEPARATELY
9 FROM OR IN CONJUNCTION WITH ANOTHER INSPECTION OR INVESTIGATION OF
10 AN EMPLOYER BY THE COMMISSIONER UNDER STATE LAW.

11 (B) (1) THE COMMISSIONER SHALL DEVELOP AND MAKE AVAILABLE
12 A COMPLAINT FORM THAT MAY BE USED BY A PERSON WHO IS A LAWFUL
13 RESIDENT OF THE STATE TO ALLEGE A VIOLATION OF § 3-1105 OR § 3-1106 OF
14 THIS SUBTITLE.

15 (2) THE COMPLAINT FORM DEVELOPED UNDER PARAGRAPH (1)
16 OF THIS SUBSECTION SHALL REQUIRE THE NAME OF THE PERSON FILING THE
17 COMPLAINT.

18 (3) THE COMPLAINT FORM DEVELOPED UNDER PARAGRAPH (1)
19 OF THIS SUBSECTION MAY NOT REQUIRE THE PERSON FILING THE COMPLAINT
20 TO:

21 (I) LIST THE PERSON'S SOCIAL SECURITY NUMBER; OR

22 (II) HAVE THE FORM NOTARIZED.

23 (C) AN EMPLOYER MAY NOT TAKE DISCIPLINARY OR RETALIATORY
24 ACTION AGAINST AN INDIVIDUAL WHO FILES A COMPLAINT WITH THE
25 COMMISSIONER ALLEGING A VIOLATION OF § 3-1105 OR § 3-1106 OF THIS
26 SUBTITLE.

27 (D) EXCEPT AS PROVIDED BY SUBSECTION (E) OF THIS SECTION, ON
28 RECEIPT OF A COMPLAINT ON THE COMPLAINT FORM, THE COMMISSIONER
29 SHALL:

30 (1) INVESTIGATE WHETHER THE EMPLOYER HAS VIOLATED §
31 3-1105 OR § 3-1106 OF THIS SUBTITLE;

1 **(2) INFORM THE EMPLOYER THAT THE EMPLOYER MAY REQUEST:**

2 **(I) THE NAME OF THE PERSON FILING THE COMPLAINT; OR**

3 **(II) THE NAME OF THE PERSON WHO CAUSED THE**
4 **COMPLAINT TO BE FILED IF THE COMPLAINT IS FILED BY AN ENTITY; AND**

5 **(3) PROVIDE THE NAME REQUESTED UNDER ITEM (2) OF THIS**
6 **SUBSECTION.**

7 **(E) THE COMMISSIONER MAY NOT INVESTIGATE A COMPLAINT THAT**
8 **ALLEGES A VIOLATION OF § 3-1105 OR § 3-1106 OF THIS SUBTITLE IF THE**
9 **COMPLAINT IS BASED SOLELY ON RACE, COLOR, OR NATIONAL ORIGIN.**

10 **(F) (1) WHILE INVESTIGATING A COMPLAINT THAT ALLEGES A**
11 **VIOLATION OF § 3-1106 OF THIS SUBTITLE, THE COMMISSIONER SHALL VERIFY**
12 **THE WORK AUTHORIZATION STATUS OF THE ALLEGED UNAUTHORIZED ALIEN**
13 **WITH THE FEDERAL GOVERNMENT IN ACCORDANCE WITH 8 U.S.C. § 1373(C).**

14 **(2) THE COMMISSIONER MAY NOT ATTEMPT TO INDEPENDENTLY**
15 **MAKE A FINAL DETERMINATION AS TO WHETHER AN INDIVIDUAL IS AN**
16 **UNAUTHORIZED ALIEN.**

17 **(G) (1) WHILE ADMINISTERING THE STATEWIDE AUDITING PROGRAM**
18 **OR INVESTIGATING A COMPLAINT FILED UNDER THIS SECTION, THE**
19 **COMMISSIONER MAY:**

20 **(I) ENTER THE PREMISES OF THE BUSINESS OF THE**
21 **EMPLOYER AT REASONABLE TIMES AND ON PROPER PRESENTATION OF**
22 **CREDENTIALS TO THE EMPLOYER;**

23 **(II) QUESTION THE EMPLOYER OR AN EMPLOYEE OF THE**
24 **EMPLOYER; AND**

25 **(III) INSPECT, INVESTIGATE, REPRODUCE, OR PHOTOGRAPH**
26 **ORIGINAL BUSINESS RECORDS RELEVANT TO DETERMINING COMPLIANCE WITH**
27 **THIS SUBTITLE.**

28 **(2) A REPRODUCTION OR PHOTOGRAPH OF A BUSINESS RECORD**
29 **MADE UNDER PARAGRAPH (1) OF THIS SUBSECTION IS NOT A PUBLIC RECORD**
30 **UNLESS THE ORIGINAL BUSINESS RECORD IS A PUBLIC RECORD.**

31 **3-1109.**

1 (A) IF THE COMMISSIONER DETERMINES THAT AN EMPLOYER HAS
2 VIOLATED § 3-1105 OR § 3-1106 OF THIS SUBTITLE, THE COMMISSIONER SHALL
3 ISSUE A PRELIMINARY ORDER THAT INCLUDES:

4 (1) THE COMMISSIONER'S FINDINGS FROM THE INVESTIGATION;

5 (2) THE PENALTIES THAT THE COMMISSIONER WILL ASSESS IF A
6 FINAL ORDER IS ISSUED;

7 (3) THE PROCESS BY WHICH THE PRIVATE EMPLOYER MAY
8 REQUEST A HEARING; AND

9 (4) THE PROCESS BY WHICH THE COMMISSIONER MAY WAIVE THE
10 PENALTIES IF THE EMPLOYER REMEDIES THE VIOLATION AS PROVIDED IN §
11 3-1112(B) OF THIS SUBTITLE.

12 (B) (1) WITHIN 10 BUSINESS DAYS OF THE DATE OF THE
13 PRELIMINARY ORDER ISSUED UNDER SUBSECTION (A) OF THIS SECTION, AN
14 EMPLOYER MAY SUBMIT A WRITTEN REQUEST FOR A HEARING ON THE ORDER
15 AND PROPOSED PENALTIES.

16 (2) IF THE EMPLOYER FAILS TO SUBMIT A WRITTEN REQUEST IN
17 ACCORDANCE WITH PARAGRAPH (1) OF THIS SUBSECTION, THE EMPLOYER IS
18 DEEMED TO HAVE WAIVED THE RIGHT TO A HEARING ON THE ORDER AND
19 PROPOSED PENALTIES.

20 (C) A HEARING REQUESTED UNDER SUBSECTION (B) OF THIS SECTION
21 SHALL BE COMPLETED WITHIN 60 DAYS AFTER THE DATE THE PRELIMINARY
22 ORDER WAS ISSUED.

23 (D) THE COMMISSIONER SHALL ISSUE A FINAL ORDER:

24 (1) WITHIN 30 DAYS OF THE DATE OF THE PRELIMINARY ORDER
25 IF THE EMPLOYER WAIVES THE RIGHT TO A HEARING; OR

26 (2) WITHIN 60 DAYS OF THE DATE OF THE HEARING IF THE
27 EMPLOYER REQUESTS A HEARING.

28 (E) (1) THE COMMISSIONER SHALL ADOPT REGULATIONS TO
29 IMPLEMENT A HEARING PROCESS UNDER WHICH THE EMPLOYER MAY
30 CHALLENGE A PRELIMINARY ORDER UNDER THIS SECTION.

1 **(2) THE REGULATIONS ADOPTED UNDER PARAGRAPH (1) OF THIS**
2 **SUBSECTION SHALL BE CONSISTENT WITH THE ADMINISTRATIVE PROCEDURE**
3 **ACT UNDER TITLE 10, SUBTITLE 1 OF THE STATE GOVERNMENT ARTICLE.**

4 **3-1110.**

5 **(A) BEGINNING NOVEMBER 1, 2012, AND MONTHLY THEREAFTER, THE**
6 **COMMISSIONER SHALL POST A PUBLICLY ACCESSIBLE LIST ON THE**
7 **DEPARTMENT'S WEB SITE OF THE EMPLOYERS THAT HAVE VIOLATED § 3-1105**
8 **OR § 3-1106 OF THIS SUBTITLE.**

9 **(B) THE LIST POSTED UNDER SUBSECTION (A) OF THIS SECTION SHALL**
10 **STATE:**

11 **(1) THE NAME OF THE EMPLOYER;**

12 **(2) THE PLACE OF BUSINESS WHERE THE VIOLATION OCCURRED;**

13 **(3) A BRIEF DESCRIPTION OF THE VIOLATION;**

14 **(4) WHETHER THE VIOLATION WAS A FIRST OR SUBSEQUENT**
15 **VIOLATION;**

16 **(5) ANY PENALTIES ASSESSED FOR THE VIOLATION; AND**

17 **(6) ANY STEPS THAT THE EMPLOYER HAS TAKEN TO REMEDY THE**
18 **VIOLATION.**

19 **(C) THE MONTHLY LIST SHALL REMAIN ON THE WEB SITE UNTIL THE**
20 **COMMISSIONER DEEMS THAT IT IS APPROPRIATE TO REMOVE IT.**

21 **3-1111.**

22 **(A) IF THE COMMISSIONER DETERMINES THAT AN EMPLOYER HAS**
23 **VIOLATED § 3-1106 OF THIS SUBTITLE, THE COMMISSIONER SHALL NOTIFY THE**
24 **CHIEF PROCUREMENT OFFICER OF EACH STATE AND LOCAL GOVERNMENT**
25 **ENTITY FOR THE PURPOSE OF DETERMINING WHETHER THE EMPLOYER ALSO**
26 **VIOLATED TITLE 20 OF THE STATE FINANCE AND PROCUREMENT ARTICLE.**

27 **(B) THE COMMISSIONER SHALL NOTIFY U.S. IMMIGRATION AND**
28 **CUSTOMS ENFORCEMENT OF AN EMPLOYER THAT VIOLATES § 3-1106 OF THIS**
29 **SUBTITLE.**

1 **(C) IF THE COMMISSIONER DISCOVERS AN INDIVIDUAL WHO IS AN**
2 **UNAUTHORIZED ALIEN WORKING FOR AN EMPLOYER IN THE STATE, THE**
3 **COMMISSIONER SHALL NOTIFY:**

4 **(1) U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT; AND**

5 **(2) THE LOCAL LAW ENFORCEMENT AGENCY IN THE AREA WHERE**
6 **THE INDIVIDUAL RESIDES OR PRESUMABLY RESIDES.**

7 **3-1112.**

8 **(A) IN THIS SECTION, “EMPLOYER” DOES NOT INCLUDE A**
9 **GOVERNMENTAL UNIT.**

10 **(B) EXCEPT AS PROVIDED IN SUBSECTIONS (C) AND (D) OF THIS**
11 **SECTION, AN EMPLOYER IN VIOLATION OF § 3-1105 OF THIS SUBTITLE SHALL BE**
12 **SUBJECT TO:**

13 **(1) FOR A FIRST OFFENSE:**

14 **(I) A CIVIL PENALTY OF UP TO \$1,000 PER EMPLOYEE**
15 **EMPLOYED IN VIOLATION OF § 3-1105 OF THIS SUBTITLE; AND**

16 **(II) SUSPENSION OF ALL LICENSES HELD BY THE EMPLOYER**
17 **AT THE LOCATION WHERE THE VIOLATION OCCURRED FOR 30 DAYS FROM THE**
18 **DATE OF THE FINAL ORDER ISSUED UNDER § 3-1108 OF THIS SUBTITLE;**

19 **(2) FOR A SECOND OFFENSE:**

20 **(I) A CIVIL PENALTY OF UP TO \$5,000 PER INDIVIDUAL**
21 **EMPLOYED IN VIOLATION OF § 3-1105 OF THIS SUBTITLE; AND**

22 **(II) SUSPENSION OF ALL LICENSES HELD BY THE EMPLOYER**
23 **AT THE LOCATION WHERE THE VIOLATION OCCURRED FOR 1 YEAR FROM THE**
24 **DATE OF THE FINAL ORDER ISSUED UNDER § 3-1108 OF THIS SUBTITLE; OR**

25 **(3) FOR A THIRD OFFENSE:**

26 **(I) A CIVIL PENALTY OF UP TO \$10,000 PER INDIVIDUAL**
27 **EMPLOYED IN VIOLATION OF § 3-1105 OF THIS SUBTITLE; AND**

28 **(II) THE PERMANENT REVOCATION OF ALL LICENSES HELD**
29 **BY THE EMPLOYER AT THE LOCATION WHERE THE VIOLATION OCCURRED.**

1 **(C) THE COMMISSIONER SHALL ISSUE A WARNING IN LIEU OF THE**
2 **PENALTIES LISTED IN SUBSECTION (B) OF THIS SECTION IF:**

3 **(1) THE EMPLOYER REMEDIES THE VIOLATION WITHIN 30 DAYS**
4 **OF THE DATE OF THE PRELIMINARY ORDER; AND**

5 **(2) THE COMMISSIONER DETERMINES THAT THE VIOLATION WAS**
6 **UNINTENTIONAL.**

7 **(D) (1) IF AN EMPLOYER VIOLATED § 3-1105 BY EXECUTING A**
8 **FRAUDULENT AFFIDAVIT OR FAILED TO SEND WRITTEN NOTICE UNDER §**
9 **3-1105(D), THE EMPLOYER IS LIABLE TO THE STATE FOR:**

10 **(I) A CIVIL PENALTY OF NOT MORE THAN \$10,000; AND**

11 **(II) AN ADDITIONAL AMOUNT OF NOT MORE THAN THREE**
12 **TIMES THE AMOUNT OF DAMAGES THAT THE STATE SUSTAINS AS A RESULT OF**
13 **THE ACTS OF THE EMPLOYER.**

14 **(2) THE COMMISSIONER SHALL ADOPT REGULATIONS FOR**
15 **CALCULATING THE AMOUNT OF DAMAGES THAT THE STATE SUSTAINS BECAUSE**
16 **AN EMPLOYER VIOLATED § 3-1105 OF THIS SUBTITLE BY EXECUTING A**
17 **FRAUDULENT AFFIDAVIT OR FAILED TO SEND WRITTEN NOTICE UNDER §**
18 **3-1105(D) OF THIS SUBTITLE.**

19 **(E) A SECOND OR SUBSEQUENT VIOLATION SHALL RESULT FROM A**
20 **COMPLAINT THAT IS SEPARATE FROM THE COMPLAINT THAT RESULTED IN THE**
21 **PREVIOUS VIOLATION.**

22 **(F) A CIVIL PENALTY ASSESSED UNDER THIS SECTION SHALL BE PAID**
23 **INTO THE FUND.**

24 **3-1113.**

25 **(A) IN THIS SECTION, “EMPLOYER” DOES NOT INCLUDE A**
26 **GOVERNMENTAL UNIT.**

27 **(B) IF THE COMMISSIONER DETERMINES THAT AN EMPLOYER IS IN**
28 **VIOLATION OF § 3-1106 OF THIS SUBTITLE, THE COMMISSIONER SHALL:**

29 **(1) REQUIRE THE EMPLOYER TO TERMINATE THE EMPLOYMENT**
30 **OF ALL EMPLOYEES WHO ARE UNAUTHORIZED ALIENS;**

1 **(2) SUBJECT THE EMPLOYER TO A 3-YEAR PROBATIONARY**
2 **PERIOD, DURING WHICH THE EMPLOYER SHALL FILE QUARTERLY REPORTS**
3 **WITH THE COMMISSIONER OF EACH NEW EMPLOYEE WHO IS HIRED BY THE**
4 **EMPLOYER;**

5 **(3) REQUIRE THE EMPLOYER, WITHIN 5 DAYS AFTER THE DATE OF**
6 **THE FINAL ORDER, TO FILE A SIGNED AND SWORN AFFIDAVIT UNDER PENALTY**
7 **OF PERJURY WITH THE COMMISSIONER THAT STATES THAT THE EMPLOYER HAS**
8 **CORRECTED THE VIOLATION BY:**

9 **(I) TERMINATING THE EMPLOYMENT OF ALL EMPLOYEES**
10 **WHO ARE KNOWN TO BE UNAUTHORIZED ALIENS AND CONFIRMING THAT THE**
11 **EMPLOYER WILL NOT KNOWINGLY EMPLOY IN THIS STATE AN INDIVIDUAL WHO**
12 **IS AN UNAUTHORIZED ALIEN;**

13 **(II) REQUESTING, AFTER CONSULTATION WITH THE**
14 **EMPLOYEE, THAT THE COMMISSIONER CONDUCT A SECONDARY OR ADDITIONAL**
15 **VERIFICATION OF EMPLOYMENT AUTHORIZATION WITH THE FEDERAL**
16 **GOVERNMENT; OR**

17 **(III) ATTEMPTING TO TERMINATE THE EMPLOYMENT OF AN**
18 **EMPLOYEE WHO IS AN UNAUTHORIZED ALIEN AND THE TERMINATION HAS BEEN**
19 **CHALLENGED IN A COURT OF COMPETENT JURISDICTION; AND**

20 **(4) (I) FOR A FIRST OFFENSE, SUSPEND ALL LICENSES HELD**
21 **BY THE EMPLOYER AT THE LOCATION WHERE THE VIOLATION OCCURRED FOR**
22 **30 DAYS FROM THE DATE OF THE FINAL ORDER;**

23 **(II) FOR A SECOND OFFENSE, SUSPEND ALL LICENSES HELD**
24 **BY THE EMPLOYER AT THE LOCATION WHERE THE VIOLATION OCCURRED FOR 1**
25 **YEAR FROM THE DATE OF THE FINAL ORDER; OR**

26 **(III) FOR A THIRD OFFENSE, PERMANENTLY REVOKE ALL**
27 **LICENSES HELD BY THE EMPLOYER AT THE LOCATION WHERE THE VIOLATION**
28 **OCCURRED AS OF THE DATE OF THE FINAL ORDER.**

29 **(c) (1) IF AN EMPLOYER FAILS TO COMPLETE A SIGNED AND SWORN**
30 **AFFIDAVIT IN ACCORDANCE WITH SUBSECTION (B) OF THIS SECTION, THE**
31 **COMMISSIONER SHALL SUSPEND ALL LICENSES HELD BY THE EMPLOYER UNTIL**
32 **THE AFFIDAVIT IS COMPLETED.**

1 **(2) THE LICENSES SHALL BE REINSTATED WITHIN 10 DAYS AFTER**
2 **THE AFFIDAVIT HAS BEEN COMPLETED BY THE EMPLOYER.**

3 **(D) A SECOND OR SUBSEQUENT VIOLATION SHALL RESULT FROM A**
4 **COMPLAINT THAT IS SEPARATE FROM THE COMPLAINT THAT RESULTED IN THE**
5 **PREVIOUS VIOLATION.**

6 **(E) PROOF OF VERIFYING THE WORK AUTHORIZATION STATUS OF AN**
7 **EMPLOYEE THROUGH THE E-VERIFY PROGRAM IN ACCORDANCE WITH § 3-1105**
8 **OF THIS SUBTITLE CREATES A REBUTTABLE PRESUMPTION THAT AN EMPLOYER**
9 **DID NOT KNOWINGLY EMPLOY AN INDIVIDUAL WHO IS AN UNAUTHORIZED**
10 **ALIEN.**

11 **3-1114.**

12 **(A) A PERSON WHO KNOWINGLY FILES A FALSE AND FRIVOLOUS**
13 **COMPLAINT UNDER § 3-1108 OF THIS SUBTITLE IS SUBJECT TO A CIVIL**
14 **PENALTY OF \$500.**

15 **(B) A CIVIL PENALTY ASSESSED UNDER THIS SECTION SHALL BE PAID**
16 **INTO THE FUND.**

17 **Article – State Finance and Procurement**

18 **TITLE 20. USE OF THE FEDERAL E-VERIFY PROGRAM.**

19 **20-101.**

20 **(A) IN THIS TITLE THE FOLLOWING WORDS HAVE THE MEANINGS**
21 **INDICATED.**

22 **(B) “AGENCY” MEANS ANY AGENCY, DEPARTMENT, BOARD,**
23 **COMMISSION, OR OTHER ENTITY OF THE STATE OR A POLITICAL SUBDIVISION**
24 **OF THE STATE THAT CONTRACTS WITH CONTRACTORS OR ISSUES GRANTS OF**
25 **PUBLIC MONEY TO ELIGIBLE RECIPIENTS.**

26 **(C) “COMMISSIONER” MEANS THE COMMISSIONER OF LABOR AND**
27 **INDUSTRY.**

28 **(D) “E-VERIFY PROGRAM” MEANS:**

29 **(1) THE FEDERAL E-VERIFY PROGRAM THAT PROVIDES**
30 **ELECTRONIC VERIFICATION OF WORK AUTHORIZATION AND IS JOINTLY**

1 OPERATED BY THE U.S. DEPARTMENT OF HOMELAND SECURITY AND THE
2 SOCIAL SECURITY ADMINISTRATION; OR

3 (2) A SUCCESSOR PROGRAM THAT IS AUTHORIZED BY THE U.S.
4 DEPARTMENT OF HOMELAND SECURITY TO VERIFY ELECTRONICALLY THE
5 WORK AUTHORIZATION STATUS OF NEWLY HIRED EMPLOYEES IN ACCORDANCE
6 WITH FEDERAL IMMIGRATION LAW OR REGULATION.

7 (E) "UNAUTHORIZED ALIEN" MEANS AN ALIEN WHO DOES NOT HAVE
8 THE LEGAL RIGHT OR AUTHORIZATION UNDER FEDERAL LAW TO WORK IN THE
9 UNITED STATES AS DESCRIBED IN 8 U.S.C. § 1324A(H)(3).

10 **20-102.**

11 (A) THIS SECTION APPLIES TO:

12 (1) A CONTRACTOR THAT ENTERS INTO A CONTRACT WITH AN
13 AGENCY;

14 (2) A SUBCONTRACTOR OF A CONTRACTOR DESCRIBED UNDER
15 ITEM (1) OF THIS SUBSECTION; AND

16 (3) A PERSON WHO RECEIVES A GRANT OF MONEY FROM THE
17 STATE OR A POLITICAL SUBDIVISION OF THE STATE.

18 (B) A PERSON SUBJECT TO THIS SECTION SHALL REGISTER AND
19 PARTICIPATE IN THE E-VERIFY PROGRAM.

20 **20-103.**

21 (A) BEFORE THE APPROVAL OF A PAYMENT BY AN AGENCY TO A
22 PERSON REQUIRED TO REGISTER FOR AND PARTICIPATE IN THE E-VERIFY
23 PROGRAM UNDER THIS TITLE, THE PERSON SHALL AFFIRM TO THE
24 CONTRACTING AGENCY UNDER PENALTY OF PERJURY THAT THE WORK
25 AUTHORIZATION STATUS HAS BEEN VERIFIED FOR ALL EMPLOYEES HIRED
26 DURING THE PERFORMANCE PERIOD OF THE CONTRACT OR GRANT.

27 (B) A PERSON SUBJECT TO THIS TITLE MAY NOT EMPLOY OR CONTINUE
28 TO EMPLOY AN INDIVIDUAL, OR CONTRACT INDEPENDENTLY WITH AN
29 INDIVIDUAL, TO PERFORM WORK OR PROVIDE SERVICES UNDER THE CONTRACT
30 IF THE INDIVIDUAL IS AN UNAUTHORIZED ALIEN.

1 **(C) AS A CONDITION OF A CONTRACT, A PERSON SUBJECT TO THIS**
2 **TITLE SHALL REQUIRE THAT THE PRIME CONTRACTOR INCLUDE IN EVERY**
3 **SUBCONTRACT EXECUTED UNDER THE CONTRACT A PROVISION REQUIRING THE**
4 **SUBCONTRACTOR, INCLUDING AN INDIVIDUAL INDEPENDENT CONTRACTOR, TO**
5 **COMPLY WITH THE REQUIREMENTS IMPOSED BY THIS TITLE ON THE PRIME**
6 **CONTRACTOR.**

7 **20-104.**

8 **IF A CONTRACTOR, SUBCONTRACTOR, OR GRANTEE VIOLATES A**
9 **PROVISION OF THIS TITLE, THE CONTRACTOR, SUBCONTRACTOR, OR GRANTEE**
10 **IS INELIGIBLE FOR 3 YEARS FROM THE DATE THE VIOLATION IS DISCOVERED**
11 **TO:**

- 12 **(1) BID ON AN AGENCY CONTRACT;**
13 **(2) APPLY FOR A GRANT FROM AN AGENCY; OR**
14 **(3) RECEIVE AN AGENCY CONTRACT OR GRANT.**

15 **SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect**
16 **July 1, 2012.**